



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS UNITED STATES AIR FORCE

7 DEC 2001

MEMORANDUM FOR ALL MAJCOM STAFF JUDGE ADVOCATES

FROM: HQ USAF/JA  
1420 Air Force Pentagon  
Washington, DC 20330-1420

SUBJECT: **TJAG Special Subject Letter 2001-09: Legal Support to Housing Privatization Projects**

**Summary.** This letter outlines roles and responsibilities related to legal support for housing privatization. It also discusses the function of privatization support contractors and how to evaluate their requests for outside legal support.

**Background.** The Air Force has decided to rely heavily on the housing privatization authorities at 10 U.S.C. §§ 2871-2885 for constructing, renovating, and maintaining military family housing. The Air Force's effort to privatize housing at some of our bases has raised the issue of the need for, and role of, outside counsel in providing legal support to these projects. This letter outlines the decisions as a result of last summer's Air Force Housing and Facilities Privatization Executive Steering Group (ESG) meeting wherein we determined the roles and responsibilities both government and non-government attorneys will have in providing support to this important undertaking.

**SAF and AF Legal Support.** Although the Federal Acquisition Regulation (FAR) provides useful guidelines, the Air Force considers these housing privatization projects to be real estate transactions. As such, authority to approve these projects has been delegated to SAF/IEI. SAF/GCN provides legal advice to SAF/IEI. The Judge Advocate General's Department (TJAGD) has responsibility for providing legal support to housing privatization projects at all levels below the Secretariat and exercises this responsibility through MAJCOM and field legal offices. The Air Force Center for Environmental Excellence (AFCEE) at Brooks AFB, Texas, has been designated as the Air Force's Housing Privatization Center of Excellence.

SAF/IEI has delegated to the MAJCOMs the authority to execute the housing privatization projects. MAJCOM commanders or vice commanders are the Source Selection Authorities (SSA) supported by Acquisition Support Teams (AST). MAJCOM legal offices are responsible for advising SSAs and providing legal support for the source selection process at the evaluation and advisory council level. This includes advice to the SSA and subordinate levels regarding the legal documents. As in the past, SAF/GCQ will also participate in the source selection process.

**AFCEE Legal Office to Support PSC Contracts.** AFCEE has determined that private sector contractors, called "Privatization Support Contractors" (PSC) should be hired to assist the Air Force in selecting and finalizing arrangements with private developers to renovate or build and to operate military family housing for selected Air Force installations. Administration of AFCEE's PSC contracts is supported by the AFCEE legal office, which also serves as a resource available to assist other Air Force legal offices with their housing privatization projects. The PSCs, in turn, have sought to contract out legal support to help in both the source selection and real estate closing portions of the projects. Through the PSC contracts, AFCEE offers the MAJCOMs legal support using these outside counsel for source selections and preparation of legal documents.

**Reviews of PSC Requests for Outside Counsel.** In this regard, the ESG affirmed the SAF/GC and AF/JA policy that a PSC contractor may *only* include outside legal support in its Statement of Work and costs in its cost proposal *if* it is approved by the MAJCOM SJA and AFCEE's real estate attorney. Approval may be given only for work which is not inherently governmental and only for costs deemed reasonable. In reviewing proposed PSC legal work and costs, MAJCOM SJAs should determine whether any of the work could better be performed by Air Force lawyers either because of the cost or the nature of the work. In the event outside counsel is used, MAJCOM legal staffs must be sufficiently informed and knowledgeable about the legal work being performed, to be in a position to validate the recommendations and results, and to carry out their duties to provide legal advice to their clients.

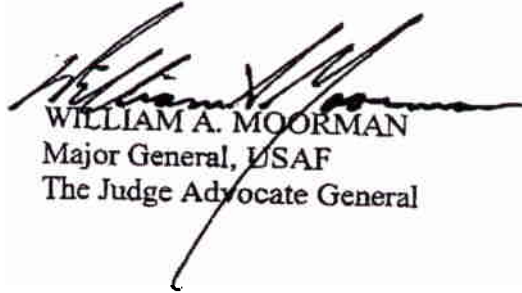
An important topic at the ESG meeting was maintaining the schedule. When reviewing proposals for the use of outside counsel, it is imperative that you respond to such requests in as timely a manner as possible. There are numerous privatization efforts underway and many others ready to be worked. AFCEE is under a tight schedule to get the PSCs on contract. We do not want to be a source of delay on these projects without good reason. To that end, you should review these requests as soon as you receive them, determine what legal services, if any, you require for the entire project, and respond to AFCEE promptly. I have accepted an ESG tasking to explore the possibility of establishing an AFLSA housing privatization office, staffed with Air Force lawyers trained in modern real estate transactions, to be collocated with AFCEE. This office would aid AFCEE in providing support for housing privatization projects.

**Responsibility for AFMC Legal Support.** In AFMC, the AFMC Law Office's Real Estate Division (AFMC LO/JAVR) is designated to provide MAJCOM-level legal support for AFMC housing privatization projects. This organization is set up to support both the source selection and portions of the process related to drafting legal documents. It is prepared to provide advice and legal support concerning the various legal issues that will arise subsequent to closing and during the administration of the project. AFMC's Reserve JAG Real Estate Unit provides consulting services, training, and legal information in real estate law matters. It assigns Reserve JAGs with commercial real estate expertise from throughout the Air Force to each AFMC project to assist and support the base and MAJCOM attorneys.

**Responsibility for AF-wide Legal Support.** I have designated the AFMC Law Office's Real Estate Division (AFMC LO/JAVR) as JA's Office of Primary Responsibility (OPR) for all legal matters in the area of housing privatization. That office can serve as a resource available

to other Air Force, MAJCOM, and field legal offices. They will act as my liaison at the action officer level with AFCEE, Air Staff, SAF/GC, and other DoD organizations. They will also be responsible for coordinating and resolving legal issues of common importance to us all, acting as a central focal point of legal expertise on housing privatization matters.

I encourage your staff to consult with them on matters potentially affecting any housing project. Major Kevin Fleming (DSN 785-6111, ext 331) and Mr. John Thrasher (DSN 785-6111, ext 304) are the primary working level points of contact within the AFMC LO/JAVR organization. Should the need arise, you may seek assistance or information from Colonel Brian Hopkins, Director of Environmental Law, AFMC LO/JAV, DSN 787-5034; Mr. Anthony Perfilio, Director AFMC Law Office, DSN 785-6113; or Brigadier General Jerald Stubbs, AFMC/JA, DSN 787-2964.



WILLIAM A. MOORMAN  
Major General, USAF  
The Judge Advocate General